

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 767 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEW JAHANGIR VAKIL MILLS

Versus

STATE OF GUJARAT

Appearance:

MR KN RAVAL for Petitioner
MS PS PARMAR for Respondent No. 1
None present for Respondent No. 2,3
MR JR NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/07/97

ORAL JUDGMENT

#. Heard learned counsel for the parties and perused the Special Civil Application.

#. The petitioner filed this Special Civil Application before this Court and challenge has been made to the order of District Judge, Bhavnagar, passed in Misc. Civil Application No.6 of 1990, and the notice of respondent No.2, annexure 'B' for attachment of property of the petitioner. Amendment has been made in Special Civil Application and further prayer has been made for direction to the respondents to forbear and desist from recovering the amount of gratuity payable to the respondent No.4.

#. The facts of the case in brief are that respondent No.4 herein, the workman of the petitioner-Company has retired on reaching the age of superannuation in the month of October 1985. He was not paid gratuity payable to him under the provisions of Gratuity Act, 1972, and as such, he approached the Controlling authority under the aforesaid Act by filing application No.179 of 1988 in which the petitioner was one of the party. This application of respondent No.4 was allowed by the said authority and the petitioner was directed to pay Rs.28,578/- as amount of gratuity to respondent No.4. The petitioner has not paid that amount to respondent No.4 and as such, he initiated the proceedings for recovery of the said amount. The petitioner, instead of making the payment of amount of gratuity to respondent No.4, has filed a Civil Suit No.609 of 1989 in the Court of third Joint Civil Judge, Senior Division, Bhavnagar and prayer has also been made for grant of temporary injunction under Order 39, Rule 1 & 2 of Civil Procedure Code. The trial Court, after considering the matter on merits of the matter, under its order dated 20th December 1989, declined to grant any temporary injunction in favour of petitioner and the application below Ex.5 was dismissed. The petitioner filed Misc. Civil Application No.6 of 1990 against the said order in the Court of Joint District Judge at Bhavnagar and the said appeal was also dismissed by the Appellate Court under its order dated 16th January 1990. The petitioner also challenged before the Civil Court, the notice issued by the competent authority for recovering the amount by way of attachment of property of the petitioner. On 6th March, 1990, this Special Civil Application has come up for admission before this Court and this Court has ordered as under:

"Rule.

To be heard with Special C.A. No.4678/87.

Mr.J.R.Nanavati waives service of rule on behalf
of respondent No.4.

Interim relief in terms of prayer (d) of
paragraph 11 on the condition that the petitioner
deposits in this Court the amount awarded by
respondent No.3 as gratuity in favour of
respondent No.4 within six weeks from today. On
the amount being deposited the Registrar shall
invest this amount for a period of not less than
two years in a fixed deposit with a Nationalised
Bank or in a fixed deposit with any Government

Undertaking or Statutory Corporation, which may be suggested by respondent No.4. Respondent No.4 will be entitled to withdraw interest accruing due periodically on the amount invested without furnishing any security. The interest amount paid to respondent No.4 shall not be refundable by him irrespective of the result of the petition. If respondent No.4 requests, the amount of interest may be sent to him at his residential address by Money Order at his cost."

#. In pursuance of the order of this Court dated 6th March 1990 an amount of Rs.28,578/- was invested in Fixed Deposit Receipt in the name of Registrar of this Court till 24th May 1993, and on maturity, the same was ordered to be renewed till 24th May 1996. Lastly that F.D.R. was further renewed for a period of three years, i.e. upto 1999.

#. The learned counsel for the respondent No.4 contended that this Special Civil Application is not maintainable on the ground that the order of controlling authority of payment of gratuity in favour of respondent No.4 has not been challenged by petitioner in this Special Civil Application. It has next been contended that the order of the controlling authority was appealable and the appeal has not been filed and as such it has attained finality. The civil suit filed by the petitioner is still pending. In the civil suit the recovery proceedings of amount of gratuity has been challenged on the ground that the order of the Controlling authority is without jurisdiction and that suit is pending and as such the petitioner could not have availed of this proceedings. It has next been contended that the Civil Court has declined to grant any temporary injunction in favour of the petitioner which order has been affirmed by the Appellate Court and as this order has been passed in the civil suit, this Special Civil Application is not maintainable. Lastly, it has been contended by the learned counsel for respondent No.4 that both the Courts below, i.e the trial Court and the Appellate Court have concurrently decided the matter against the petitioner and declined to grant temporary injunction under Order 39, Rule 1 of Civil Procedure Code and as such no interference is called for by this Court in the order of Appellate Court.

#. On the other hand, the learned counsel for the petitioner contended that the order of the Controlling Authority was without jurisdiction as the petitioner was not liable to pay the amount of gratuity to respondent.

Both the Courts below have committed serious illegality in declining to grant temporary injunction in favour of the petitioner.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. As the civil suit is pending in the Civil Court, I do not consider it to be appropriate to express any opinion on the merits of the matter. However, it is a fact on which there is no dispute that the order of Controlling Authority was appealable under the provisions of the Payment of Gratuity Act, 1972 and that appeal has not been filed. It is not in dispute that the petitioner was party to the proceedings before the Controlling Authority and the petitioner, for the reasons best known to it, allowed the order to attain finality by not filing the appeal. The petitioner has challenged the recovery proceedings by filing civil suit and that suit is still pending. The petitioner has challenged in this Special Civil Application, the order of the Appellate Court under which the Misc. Civil Appeal filed by the petitioner against the order of the trial Court below Ex.5 has been dismissed. So the Appellate Court has declined to grant temporary injunction in favour of petitioner under Order 39, Rule 1 and 2 of the Civil Procedure Code. Grant of temporary injunction is discretionary of the trial Court and Appellate Court and in case both the Courts have not granted temporary injunction in favour of petitioner, it cannot be said that any illegality has been committed by them in exercising their jurisdiction which calls for interference of this Court sitting under Article 226/227 of the Constitution of India. In the matter of grant of temporary injunction the Court has to take care to see that the petitioner has established that it has a prima-facie case in its favour. Secondly, that in case temporary injunction is not granted the petitioner will suffer irreparable injury which cannot be compensated in terms of money and lastly that the balance of convenience lies in favour of petitioner. The respondent No.4 has approached the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 and there is an order in his favour from that Authority in the proceedings in which the petitioner was a party. This order was appealable and appeal has not been filed. The petitioner's case is that the said authority had no jurisdiction to pass such order. This matter is still pending and it has to be adjudicated by the Civil Court and even if it is taken to be a prima-facie case in favour of petitioner, then only on this ground, it was not obligatory on the part of Civil Court to grant

temporary injunction in favour of the petitioner. It is a case of retired workman of the Company of payment of gratuity and the Company is disowning its liability to pay the gratuity to the workman. It is a case where the authority has found the respondent No.4 to be entitled for gratuity from the petitioner and in case the injunction was declined, I do not find that it would have caused irreparable injury to the petitioner which cannot be compensated in terms of money. It is a matter of payment of gratuity and as such if ultimately the petitioner succeeds in the civil suit, the Court can certainly pass the order of refund of the amount by respondent No.4 to the petitioner, but in case at this stage, temporary injunction is ordered, it will certainly cause irreparable injury to a retired workman of the Company. The difficulties with which the respondent No.4 will be put in for want of amount of gratuity will be comparatively more than the difficulty which may be suffered by the petitioner for non grant of temporary injunction in its favour. The Appellate Court has also, in an appeal filed under Order 43, Rule 1 of Civil Procedure Code, against the order of trial Court under Order 39, Rule 1 and 2 of Civil Procedure Code, has very limited jurisdiction. When the Appellate Court has declined to interfere, then in that case, this Court also has very very limited power of judicial review. This Court, sitting under Article 226 of the Constitution of India will not interfere in the matter even if some illegality has been committed by the authority below where no prejudice has been caused to the petitioner. What the learned counsel for the petitioner contended was that the liability of payment of gratuity to the respondent No.4 was of the Company which was holding the establishment, the management which has been taken over by the petitioner. It has further been contended that the Commissioner of Payment has awarded the amount to the Company which is a source from which the amount of gratuity should have been taken. The learned counsel for the petitioner insisted that respondent No.4 should have approached the Commissioner of Payments. However, it is very convenient for the petitioner's counsel to contend but it is too difficult for respondent No.4 to approach the Commissioner of Payments for getting this amount. Moreso, when he approached the appropriate authority where after notice to the petitioner, the matter has been decided in his favour, the petitioner, instead of filing this suit and spending money in litigations, should have honoured the order of the Controlling Authority under the Payment of Gratuity Act, 1972 and should have approached the Commissioner of Payments to reimburse that amount from the amount of compensation given to the Company,

which precisely has not been done. Be that as it may. It is not for this Court to advise what course should have been adopted by the petitioner as it has its own advisors, but this writ petition is wholly misconceived. Even if this writ petition is taken to be under Article 227 of the Constitution, the Court is not under obligation to exercise its powers in favour of petitioner and this Court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. As stated earlier, in this matter, when both the Courts below, i.e. the trial Court and the Appellate Court have declined to interfere in the matter, how far it can be a case much less a fit case for this Court to interfere under Article 227 of the Constitution of India in favour of petitioner. Otherwise also, this writ petition is not maintainable under Articles 226 or 227 of the Constitution of India. Reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of Swetambar Jain Samiti v. Alleged Committee of Management, reported in JT 1996(3) SC 21 and in the case of Durga Prasad v. Naveen Chandra & Ors., reported in JT 1996(3) SC 564. The Hon'ble Supreme Court, in these two cases held that this Court will not permit the this Court under extra ordinary jurisdiction to be converted into Civil Court under the ordinary law. When the civil suit is pending, the miscellaneous order passed by the trial Court cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. It is exactly what the petitioner has done in the present case by challenging the miscellaneous order of the Civil Court passed, by filing this Special Civil Application.

#. In the result, this Special Civil Application fails and the same is dismissed. The amount of gratuity which was ordered to be paid to respondent No.4 by the Controlling Authority under the Payment of Gratuity Act, 1972, is lying deposited in F.D.R. in the name of Registrar of this Court. That F.D.R. has been renewed till 1999. The Registrar of this Court is directed to forthwith get the amount of F.D.R. withdrawn and pay the amount of gratuity together with amalgamated interest thereon to respondent No.4, by preparing Account Payee Demand Draft of the aforesaid amount in the name of respondent No.4 payable at Bhavnagar. The Account Payee Demand Draft so prepared may be given to the counsel for respondent No.4 for transmission of the same to respondent No.4. The counsel for respondent No.4 shall

produce in the Court, the receipt of the said Demand
Draft given by respondent No.4. Rule discharged. No
order as to costs.

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